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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,559	09/15/2003	Todd A. Woford	SMI0097.US	9745
7590	09/08/2005		EXAMINER	
Todd T. Taylor TAYLOR & AUST, P.C. 142 S. Main St. P.O. Box 560 Avilla, IN 46710			RAMANA, ANURADHA	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,559

Applicant(s)

WOLFORD ET AL.

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/15/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 1 and 8 are objected to because of the following informalities. In claim 1 (line 6) and claim 8 (line 6), it appears that "tooth" should be "edge" for clarity. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 5 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In line 2 of claims 5 and 12, it appears that "inwardly" should be "outwardly" to be consistent with Figure 4 wherein the cutting edge 22 of a tooth is shown extending outwardly from cutting face 18. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6, 8-11, 13, 15-16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Da Rold (US 5,968,049).

Da Rold discloses a milling cutter for medical purposes having a milling body 2 in the form of a hemisphere, for e.g. in the case of an acetabulum cutter; and a plurality of cutting teeth 10, wherein each tooth 10 has a cutting tongue or "edge" 13 at an angle

about an axis through base end 14 and a clearance opening (Figures 3-6, col. 2, lines 48-67, col. 3 and col. 4, lines 1-27).

Regarding claims 1-3, 6, 8-11 and 13, Da Rold discloses a method of mechanical production of a milling cutter including cutting a plurality of openings 10 in a milling body (in the form of a hemisphere in the case of an acetabulum cutter), wherein each opening defines a cutting tongue or "edge" 13 of a tooth and bending a cutting tongue or "edge" 13 of each tooth (col. 3, lines 13-29).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 7, 12, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Da Rold (US 5,968,049).

Da Rold discloses the claimed invention except for the claimed shapes.

It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to have constructed the milling cutter 2 with a concave-shaped cutting face and the clearance opening as a semi-circular opening, since applicant has not disclosed that these shapes solve any stated problem or are anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a cutting face of a cutter. In re Dailey and Eilers, 149 USPQ 47 (1966).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

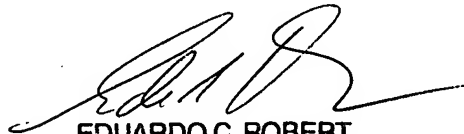
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anu Ramana*
September 5, 2005


EDUARDO C. ROBERT
PRIMARY EXAMINER